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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

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STATE OF ARIZONA

v.

ANGELENE TOCCO, PETITIONER

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# PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS

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## QUESTION PRESENTED

Whether a party's (civil defendant's) Fifth and Fourteenth Amendment rights to due process are violated when a trial court enters an Order of Summary Judgment against a co-defendant and, as damages assessed against the co-defendant, orders the summary forfeiture of real property (another *in rem* party to the action) owned solely by the party, even though neither the party nor the *in rem* property are named in the motion itself, and the party-defendant could not reasonably infer that such a summary forfeiture would ensue from the plaintiff's Motion for Summary Judgment filed against the co-defendant.

## PARTIES TO THE PROCEEDING

In addition to the named party, Joseph Frank Tocco was also a party in the trial court in the appeal to the Arizona Court of Appeals and in the Petition for Review to the Arizona Supreme Court.

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Angelene Tocco, by and through counsel, petitions for a writ of certiorari to review the judgment of the Arizona Court of Appeals. A Petition for Review to the Arizona Supreme Court was rejected. The Arizona Supreme Court is the court of last resort in the State of Arizona.

## DECISIONS BELOW

The Petition for Review to the Arizona Supreme Court was denied on October 15, 1987, and is attached as Exhibit A to the Appendix.

The memorandum decision of the Arizona Court of Appeàls was entered on May 19, 1987, and is attached as Exhibit B to the Appendix. The trial court's order of Partial Summary Judgment against Joseph Frank Tocco and One Parcel of Real Estate was filed on September 9, 1985, and is attached as Exhibit C to the Appendix.

## JURISDICTION

On January 6, 1988 Justice O'Connor extended the time within which to file a petition for a writ of certiorari to and including February 4, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth and Fourteenth Amendments to the United States Constitution provide:

AMENDMENT V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Emphasis added).

AMENDMENT XIV (Section 1)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis added).

STATEMENT

This case arises out of a civil rack-eteering complaint (No. C 471228) filed on

October 2, 1982 against Petitioner, Angelene Tocco, an in rem defendant 3207 East Washington (owned at the time solely by Angelene Tocco), Joseph Frank Tocco (Petitioner's husband, but at all times relevant, legally separated from Petitioner), and approximately forty-eight other defendants. Previously, on September 20, 1982, a criminal information (CR-129027) was filed against co-defendant Joseph Frank Tocco. The information alleged one count of leading organized crime and other criminal activities.[1/]

In the criminal complaint, it was further alleged that unlawful activities occurred at the 3207 East Washington Street property (in rem civil defendant) owned by Petitioner Angelene Tocco.

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1/ The organized crime count was dismissed by the trial court on the basis of unconstitutionality of the Arizona racketeering statute and was reversed by the Arizona Court of Appeals. Subsequently, the Arizona Supreme Court accepted co-defendant Tocco's Petition for Review, and the Court has not yet issued a decision.

Pursuant to a quit claim deed dated June 16, 1982 and recorded June 17, 1982, Petitioner Angelene Tocco became the sole owner of the property.[2/]

Subsequent to the filing of the civil complaint, co-defendant Joseph Frank Tocco was charged in three other criminal cases (Nos. CR 131139, CR 132559 and CR 136709).[3/] On or about November 14, 1983, co-defendant Joseph Frank Tocco pled guilty to most of the charges.[4/]

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2/ This transaction took place before any civil or criminal complaints had been filed, and although one of the counts to the civil complaint alleges fraudulent conveyance from Joseph Frank Tocco to Angelene Tocco of the *in rem* civil defendant 3207 E. Washington property, there has yet to be a trial on such issue, and no determination of guilt has been made as to Angelene Tocco by any Court.

3/ The civil racketeering complaint was never amended to include these three criminal cases, or any specific actions arising out of such actions.

4/ On December 19, 1983, he moved to withdraw his pleas of guilty because they had not been entered into voluntarily, lacked his full knowledge and lacked his understanding. During the lengthy hearing on the motion to withdraw he claimed he was innocent of the charges and (cont. on page 6)

Counsel undersigned, together with co-counsel, Victor Aronow and Robert Hirsh, represented Joseph Frank Tocco in his motion to withdraw and an appeal regarding the pleas of guilty.

On or about February 26, 1985, a motion for partial summary judgment was filed by the State in the civil racketeering complaint against co-defendant Joseph Frank Tocco. Specifically, the State moved the trial court

> [f]or an order of partial summary judgment on the issue of Defendant Joseph Frank Tocco's liability for remedies arising out of his acts of racketeering and violation of A.R.S. §13-2313 for which he stands convicted in Maricopa County, Criminal No. CR 129027, CR 131139, CR 132559, and CR 136709, for the reasons set forth in the accompanying papers and statement of fact. (Emphasis added)

(See Clerk's Record on Appeal in Arizona Court of Appeals, Item 265, p. 1, ll. 19-26).

---

4/ (Continued) alleged ineffective assistance of counsel. The pleas were upheld and his Petition for Review to the Arizona Supreme Court was rejected.

The State's motion further read:

> Additional conduct constituting racketeering allegedly committed by Tocco and other defendants in this case is not the subject of this motion for partial summary judgment.

(See Clerk's Record on Appeal in Arizona Court of Appeals, Item 265, p. 4, ll. 7-9).

Nowhere in the title of the motion or in its contents is Petitioner, Angelene Tocco's name mentioned, or even alluded to. While the in rem defendant, 3207 E. Washington Street property, is mentioned in the Appendix A to the motion, entitled "disposition", such reference is only with respect to co-defendant, Joseph Frank Tocco's plea of guilty and sentencing regarding a criminal offense (prostitution) which allegedly took place on the property. (CR 129027). Not one of the five statement of facts, in support of the State's motion mentioned, or even implicitly alluded to Petitioner Angelene Tocco or the in rem defendant, 3207 E. Washington Street property.

(See page 11 of Item 265).

The State made it clear in its motion that the relief sought would only concern co-defendant, Joseph Frank Tocco, and even then, only the specific acts which he finally litigated, illustrated by the following references in the State's motion:

> The acts that Joseph Tocco has litigated to judgment in CR-129027, CR-131139, CR-132559 and CR-136709 include the following acts of racketeering, as listed in A.R.S. § 13-2301(D)(4):

(See Item 265, p. 9, ll. 9-12).

> His liability for acts of racketeering and violation of A.R.S. § 13-2312 has been established. The prayer for relief requests the following remedies that are relevant to the liability established:

Complaint Prayer for Relief

| Paragraph | Relief |
|---|---|
| 3 | treble damages to victims. |
| 4 | joint and several liability for amount equal to gain. |
| 5 | forfeiture of enterprise assets 13-2312(A) (acquired or maintained). |

| | |
|---|---|
| 6 | forfeiture of enterprise assets 13-2312(B) (source of influence over). |
| 7 | forfeiture of proceeds and things used in racketeering. |
| 8 | receiver to collect and liquidate corporate property. |
| 9 | receiver to collect and liquidate forfeited property. |
| 10 | forfeiture of property in 12th and 13th Claims for Relief if no claim filed within 30 days. |
| 11 | setting aside fraudulent conveyances. |
| 14 | constructive trust for fraudulently conveyed property. |
| 16 | costs of investigation and prosecution. |

The plaintiff therefore moves this Court to enter its order granting all of the above relief as it applies to the acts, assets, proceeds, things and costs involved in the conduct complained of that has been litigated to conclusion. Plaintiff also moves for a hearing or series of hearings to determine the particular assets, proceeds, things and costs involved.

(See pp. 9-10 of Item 265). (Emphasis added).

While Petitioner joined in co-defendant's motion to enlarge time for filing an objection to the State's Motion for Summary Judgment, counsel undersigned did not independently respond in writing to the motion because it clearly did not relate to Petitioner, Angelene Tocco, or other defendants. The State gave Petitioner notice in the motion itself that such was the case. (See supra).

At oral argument on June 3, 1985 general references were made to property of co-defendant Joseph Frank Tocco, and counsel for Angelene Tocco made it clear that she could not reasonably see how the motion against co-defendant could affect her client's property interests:

> THE COURT: Do you wish to speak to any of these issues?
>
> MS. SLATON: Just briefly, Your Honor.
>
> THE COURT: Since you've just joined, I thought perhaps you'd also coattail the arguments, but, if you want to ...
>
> MS. SLATON: I will just speak to just

> a few of them. The most pertinent to Angelene Tocco's civil case, Your Honor, is on page seven of the State's motion.5/ The State claims that somehow a motion for partial summary judgment would dispose of property issues regarding both Angelene Tocco and Joseph Tocco.
>
> Well, Your Honor, this partial motion for summary judgment is only pertaining to Joseph Tocco. Angelene Tocco is not included in the issues raised herein and I don't see how it would affect any of Angelene Tocco's property interests or any interests of even liability, Your Honor, in the suit and I assert it does not, on the basis of the brief before the Court.

(Transcript of oral argument, June 3, 1985, p. 15, ll. 17-25; p. 16, ll. 1-2). Further, it was made clear to the Court at oral argument that the Washington Street property itself was not co-defendant's property, but Petitioner, Angelene Tocco's property. (See Tr. June 3, 1985, at p. 34, ll. 20-21).

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5/ Counsel misspoke, and was in actuality, referencing page seven of the State's response to Joseph Tocco's motion to stay for stay of the Partial Motion for Summary Judgment, which will be discussed infra.

In fact, it was assumed that additional hearings would take place to assess amounts of damages and specific assets to be assessed against co-defendant Joseph Frank Tocco. For example, see p. 11, ll. 2-4, of State's Motion for Partial Summary Judgment (Clerk's record, Item 265):

> Plaintiff also moves for a hearing or series of hearings to determine the particular assets, proceeds, things and costs involved.6/

The State's Motion for Partial Summary Judgment against co-defendant Joseph Frank Tocco was granted by the trial court's issuance of a minute order on June 18, 1985, in

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6/ This same language is included in the State's response to co-defendant Joseph Tocco's motion for stay:

> The denial of the stay, the granting of plaintiff's motion, the resulting award of the relief to which plaintiff is entitled, and the follow-up motions based upon the granting of Plaintiff's Motion for Partial Summary Judgment, should dispose of all the known available assets of Joseph and Angelene Tocco.

(Emphasis added). (See Clerk's record of Arizona Court of Appeals, Item 277, p. 7, ll. 11-16).

which the Court ordered the in rem defendant, 3207 East Washington property forfeit to the State. The order also provided for other money damages against co-defendant Joseph Frank Tocco.

The State submitted a proposed form of judgment on June 24, 1985, and on June 25, 1985 Petitioner filed objections to the form of judgment and a motion for reconsideration based upon the Fifth and Fourteenth Amendments of the United States Constitution, and alleged in her motion that the trial court's

> [o]rder goes beyond its proper jurisdiction and authority to rule on a property forfeiture of a third party [Angelene Tocco] even though: 1) There was no motion before the Court on such issue; 2) ANGELENE TOCCO had absolutely no due process of law before such forfeiture was ordered; and 3) ANGELENE TOCCO has had no trial before a jury on the merits of her civil racketeering case.

(See Clerk's Record on Appeal, Item 289, p. 3, ll. 1-7). Petitioner also attached the quit claim deed to the motion, substantiating that the Washington Street property was solely

owned by her. On July 1, 1985, Petitioner filed objections to the form of judgment, based upon the previous facts discussed herein. (See Clerk's Record on Appeal, Item 292). After oral arguments on July 25, 1985, the motion for new trial (filed by co-defendant), motion for reconsideration and objections to form of judgment were denied, and a formal judgment was entered, in which Petitioner's building was ordered forfeit to the State (See p. 37 of Exhibit C of Appendix). There were no findings of fact or conclusions of law mentioned regarding Angelene Tocco.

There were no findings of fact or conclusions of law regarding the source of funds used to purchase the building or property at 3207 East Washington Street. As mentioned earlier, there was no motion filed against the in rem defendant property itself or against Angelene Tocco. The entire motion and judgment were based upon the convictions of Joseph Frank Tocco in the criminal case.

The forfeiture of the in rem building was based upon the in personam criminal convictions of co-defendant Joseph Frank Tocco. The Petitioner, Angelene Tocco was not mentioned even in the factual bases of the criminal convictions of co-defendant Joseph Frank Tocco. The Petitioner was never charged in a criminal proceeding of any kind, in this case or any other case. Petitioner has yet, after five and one-half years, to be tried on any count of the State's civil complaint against her.

Subsequently, Petitioner filed a timely notice of appeal from the trial court's judgment. Petitioner was unable to post a supersedeas bond and when no Arizona Court would grant her relief, she filed a federal civil rights suit, in part, to obtain an order to enjoin the State from selling the property. (No. CIV 86-1168-PHX-PGK).

The federal district court granted Petitioner's injunction, and determined that the Arizona trial court had not made clear what portion of a supersedeas bond in the amount of $250,000 had to be posted on behalf of Petitioner. After the district court's order, Petitioner and the State entered into a stipulation that inter alia the building would not be sold until all appellate remedies, including those available at this Court, have been exhausted.[7/] This Petition for Certiorari follows.

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7/ Subsequent to the Arizona Court of Appeals order affirming the trial court's judgment, attorneys' fees in the amount of approximately $19,504.00 have been assessed against Petitioner for her appeal. (See Order of Arizona Court of Appeals, filed on October 30, 1987). A Petition for Review of this separate order is presently pending in the Arizona Supreme Court. (See Arizona Supreme Court No. CV-87-0298-PR).

## REASONS FOR GRANTING PETITION

The action of the Arizona trial court in acting beyond the scope of the motion before it, had the direct effect of denying Petitioner her Fifth and Fourteenth Amendment rights to due process. What has occurred here is a blatant summary taking of Petitioner's real property, without any trial, any hearings, or even the semblance of fair play. The scenario of facts which have occurred in the Arizona courts is outrageous in every respect. Petitioner has been the victim of nothing less than "short-cut" justice which must be corrected by this Court if the sacred ideals which are firmly embraced within the Fifth and Fourteenth Amendments will continue to have any vitality whatsoever in state courts.

Even though Petitioner cited many of this Court's precedents which clearly reflect the importance of property rights within the due process context, the Arizona Court of Appeals failed to cite even one of those

cases[8]/ in its memorandum decision, affirming the trial court's judgment. The action of the State and of the Arizona Courts in this case do not merely involve an in rem piece of property, but involve the long-adhered to personal right of Angelene Tocco as owner of such property.

As Justice Stewart opined in this Court's decision of Lynch et al., v. Household Finance Corp., 405 U.S. 538, 552 (1972):

> The federal courts have been particularly bedeviled by 'mixed' cases in which both personal and property rights are implicated, and the line between them has been difficult to draw with any consistency or principled objectivity. The case before us presents a good example of the conceptual difficulties created by the test.
>
> Such difficulties indicate that the dichotomy between personal

8/ Fuentes v. Shevin, 407 U.S. 67 (1972); Carey v. Piphus, 435 U.S. 245 (1978); Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); North Georgia Finishing, Inc. v. Di-Chem, 419 U.S. 601 (1975); Gerstein v. Pugh, 420 U.S. 103 (1975); Regional Rail Reorganization Act Cases, 419 U.S. 107 (1974).

> liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized. J. Locke, Of Civil Government 82-85 (1924); J. Adams, A Defence of the Constitutions of Government of the United States of America, in F. Coker, Democracy, Liberty, and Property 121-132 (1942); 1 W. Blackstone, Commentaries *138-140. Congress recognized these rights in 1871 when it enacted the predecessor of §§ 1983 and 1343 (3). We do no more than reaffirm the judgment of Congress today. (Footnotes omitted).

Yet, in flagrant disregard of this Court's recognition of the personal constitutional right inherent in a person's interest in property, the State has summarily forfeited Petitioner's property, and the Arizona courts have passively sat back and permitted this to take place.

In Goldberg v. Kelly, supra, Justice Brennan addressed the due process implications in a decision by a fact-finder which is not strictly based upon evidence presented at a hearing:

> [T]he decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing. Ohio Bell Tel. Co. v. PUC, 301 U.S. 292 (1937); United States v. Abilene & S. R. Co., 265 U.S. 274, 288-289 (1924). To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, cf. Wichita R. & Light Co. v. PUC, 260 U.S. 48, 57-59 (1922), though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law.

397 U.S. at 271. See also, In re Japanese Electronic Products Antitrust Lit., 631 F.2d 1069, 1084 (3rd Cir. 1980). As demonstrated herein, the trial court's judgment forfeiting Petitioner's property was not based upon any facts or law adduced at the hearing that gave Petitioner notice of such action.

In Jimenez v. Tuna Vessel Granada, 652 F.2d 415 (5th Cir. 1981), the Fifth Circuit held that the defendant's procedural due process had been violated where (in an admiralty case) a finding of unseaworthiness was entered by the trial judge on unpled issues. There, the Fifth Circuit held that the trial court abused its discretion when it determined that unpled issues, on which it ruled against the defendant, were tried by implied consent.

Quoting Professor Wright, Wright & Miller Federal Practice and Procedure, Civil § 1471, the Court stated:

> As Professor Wright notes, the free amendment features of Rule 15, Federal Rules of Civil Procedure, are designed to facilitate decision of claims on their merits rather than on procedural technicalities. One of the rule's more salutory features is found in the opening sentence of its subparagraph (b): 'When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.' So we avoid a parsing of the pleadings by the losing party in hopes that

> some issue, patently tried out with the knowledge of all, was not raised in them. The coin has another side, however; each party is entitled to know what is being tried, or at least to the means to find out. Notice remains a first-reader element of procedural due process, and trial by ambush is no more favored here than elsewhere. (Footnote omitted).

652 F.2d at 420. In explaining its holding, the Court concluded:

> In closing, we express our sympathy with the situation of the trial court, faced as it was with many hundreds of cases to dispose of within a time frame dictated by foreign policy considerations and neither of its choosing nor within its control. Nor was the manner in which counsel conducted trial preparations impeccable; a degree of impatience, even exasperation, on the part of the judge is understandable. Nor do we now hold that the grounds upon which the Court rested its judgment were necessarily erroneous, a question that we need not and do not reach. We hold only that trial of unpled issues by implied consent is not lightly to be inferred under Rule 15(b), that such inferences are to be viewed on a case-by-case basis and in light of the notice demands of procedural due process, and that, so tested, fair notice is not present here. (Footnote omitted)

652 F.2d at 422. See also, Jefferson Fourteenth Assoc. v. Wometco De Puerto Rico, 695 F.2d 524 (11th Cir. 1983). So too, in the present case, Petitioner submits she received no notice that her property would be held forfeit to the State resulting from a judgment on a motion against her co-defendant, even though neither Petitioner nor the in rem property defendant had been given a trial on the merits.[9/] See, Ivory Ranch, Inc. v. Quinn River Ranch, Inc., 705 P.2d 673 (Nev. 1985); Domar Ocean Transp. v. Independent Refining Co., 783 F.2d 1185 (5th Cir. 1986).

As mentioned earlier, the entire Partial Motion for Summary Judgment, filed against co-defendant, was premised upon his pleas of guilt and conviction. Because

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9/ Due process concerns should be heightened within a forfeiture context, because such remedies go beyond general civil practice. United States v. $39,000 In Canadian Currency, 801 F. 2d 1210, 1218 (10th Cir. 1986), and cases cited therein.

neither Petitioner nor her in rem property were parties to the criminal proceedings upon which the State based its motion, Petitioner could not be precluded from subsequently contesting the issues on the merits in the civil case. She had a right to expect a trial before her property interests could be taken from her. General Foods v. Mass. Dept. of Public Health, 648 F.2d 784 (1st Cir. 1981).

Finally, this was not a case where a motion for partial summary judgment for forfeiture was filed against the in rem defendant property based upon illegal acts which took place on the premises. Similarly, this was not a motion for partial summary judgment filed against Petitioner Angelene Tocco requesting a finding of liability against her with a simultaneous request for damages based upon the finding of fact.

The judgment forfeited Petitioner's solely owned property to the State as damages against co-defendant for his prior convictions,

which allegedly precluded him from subsequently denying the same facts in his civil racketeering case. Thus, the forfeiture was based solely on an in personam, as opposed to an in rem basis. See Black's Law Dictionary [Rev. 4th Ed. 1976]. The forfeiture which occurred on Petitioner's property was tantamount to a criminal forfeiture which is imposed as a sanction against a defendant upon his conviction. United States v. $39,000 In Canadian Currency, supra, 801 F.2d at 1218-1219.

Yet, the record is clear that at no juncture in the State's moving papers, at the hearing, or in the judgment itself was any factual history done regarding 1) the proceeds used to acquire the building; 2) the legitimacy of title; 3) any wrongdoing on the part of Angelene Tocco, as a recorded owner, or other relevant data. See United States v. Lot No. 50 as Shown on Map of Kingsley, 557 F. Supp. 72 (D. Nev. 1982). Furthermore,

these issues were never even addressed by the State or the Court. Thus, not only was the drastic action of the trial court based upon issues of which Petitioner had no notice, but absolutely no evidentiary safeguards were adhered to upon the issuance of the forfeiture judgment against Petitioner's ownership interest in the in rem property.

The Arizona Court of Appeals decision ignored the flagrant violations of Petitioner's due process rights and merely noted:

> The record shows that Angelene Tocco and the Property were joined as parties and were represented in the trial court. Angelene Tocco and the Property properly noticed their appeal in this matter separate and apart from the notice of appeal filed by Joseph Tocco. Further, the complaint filed in this matter named her; the complaint was served personally on her and specifically requested the forfeiture of the Property; she was personally served a notice of pending forfeiture; she was personally served with the motion for partial summary judgment which requested the forfeiture of the Property; she was represented by counsel at the hearing on the motion for partial summary judgment, after a continuance was

> granted by the trial court in order for her counsel to evaluate whether she wished to contest the motion 'as a party'; at the hearing on the motion for partial summary judgment, she explicitly joined in Joseph Tocco's response and other arguments, arguing separately and at length against the motion; and she made a motion for reconsideration of the partial summary judgment and filed an objection to the form of judgment. Thus, the record shows that Angelene actively participated in the trial court.

(See Exhibit B of Appendix at pp. 27-28).

This reasoning by the Arizona Court of Appeals renders the due process notice requirement in pleadings meaningless. Such reasoning merely indicates that the Arizona courts approve of any action against a party, whether justified or unjustified, as long as that party is present in the proceedings. Thus, the decision totally disregards all notice requirements, as explained earlier herein.

The fact that, as a party to the underlying action itself, Angelene Tocco appeared at the hearing on the motion for partial summary judgment filed against a co-defendant

and filed a notice of appeal, could not possibly waive her right to a trial on the merits. Yet, under the reasoning of the Court of Appeals, this is precisely the result of such an appearance.

Clearly, the entire motion was based upon the conduct and liability for remedies of Joseph Frank Tocco, and was to have applied only to those issues duly litigated to conclusion. It is undisputed that Angelene Tocco did not, and logically could not have litigated any of the alleged acts against Joseph Tocco to conclusion. Further, none of the Statement of Facts contained in the State's motion mentioned, or even related to, Angelene Tocco. Under such circumstances it is entirely unreasonable to have required Angelene Tocco to take any action whatsoever. An examination of the lower court's judgment reveals it is completely devoid of any reference to Petitioner, Angelene Tocco or any findings of fact or conclusions of law as to her relationship to

the motion filed against a co-defendant.

What has happened to Petitioner, Angelene Tocco, in the Arizona courts is shocking to all recognized concepts of due process, as enunciated by this Court throughout history. It is even more shocking to Petitioner that the Arizona courts would intentionally disregard this Court's strong mandate that a person's property rights are sacred within the Fifth and Fourteenth Amendment context. (See cases cited supra).

This Court must grant certiorari on the facts presented herein. The State of Arizona has been permitted to use its police power in an irresponsible manner, and has blatantly cast aside the United States Constitution in its zealous efforts to enforce the "law". The Arizona courts have been unwilling to stop such tactics, and have permitted the State to seize the property of Petitioner without being required to adhere to her rights under the Fifth and Fourteenth Amendments.

Petitioner calls upon this Court of last resort to grant her relief. This Court has firmly held that due process protections under the Fifth Amendment of the Constitution must override any expediencies in government procedures when the two interests conflict. In Stanley v. Illinois, 405 U.S. 645, 656 (1972), in the context of custody proceedings, Justice White stated:

> The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. [footnote omitted] Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.
>
> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disclaims present realities in deference to past formalities, it needlessly

> risks running rough shod over the important interests of both parent and child. It therefore cannot stand.

See Fuentes v. Shevin, supra, 407 U.S. at 90 n. 22 (1972) quoting Stanley v. Illinois, supra; See also, Bell v. Burson, 402 U.S. 535, 540-541 (1971); Goldberg v. Kelly, supra, 397 U.S. at 261 (1970). In Petitioner's case, the argument that due process is outweighed by the need for efficiency in crime fighting is even weaker, since there is lacking here even the "deference to past formalities" which was present in Stanley v. Illinois, supra. Without question, the State's actions in the present case ran "rough-shod" over Petitioner because she was deprived of her valuable property without any semblance of due process whatsoever.

Unless this Court steps in to review the issue presented, the State of Arizona will have succeeded, with the approval of the Arizona courts, in forfeiting Petitioner's

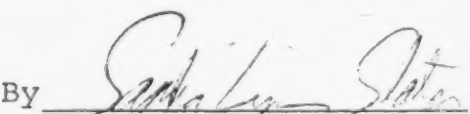
property in clear violation of her rights to due process, as presented herein.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this 4th day of February, 1988.

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